

REMARKS

Reconsideration and allowance of the subject application are respectfully requested. Claims 1-12 are all the claims pending in the application. In response to the Office Action, Applicant respectfully submits that the claims define patentable subject matter.

Claims 1-5 are remain rejected under 35 U.S.C. § 101 as allegedly being directed to non-statutory subject matter. Claims 1-5 remain rejected under 35 U.S.C. § 103(a) as being unpatentable over Kuzma in view of Mobile Tech News, “Logica first to enable MMS Inter-carrier Messaging”, hereafter “Mobile News”. Claims 6-12 are withdrawn from consideration. Applicant respectfully traverses the rejections.

With regard to the rejections under 35 U.S.C. § 101, the Examiner asserts that “the claims as currently presented provide wherein clauses without clearly claiming method steps”.² Applicant respectfully disagrees with the Examiner.

Claim 1 recites a process for sending a multimedia message with an electronic stamp. A message is sent in a multimedia message service environment comprising a multimedia message service center, the multimedia messaging service includes an electronic stamp whose validity is verified by the multimedia message service center, and the electronic stamp is an element associated with paying for sending the message and includes a value of the stamp.

Applicant respectfully submits that the process is clearly defined and outlined in the claim, and as such, the Examiner’s § 101 is erroneous.

² Page 3 of the Office Action dated December 17, 2008.

The Examiner further cites the recent Federal Circuit's *In re Bilski* decision, and asserts, without explanation, that "the claims do not meet the machine or transformation test". The test being relied on by the USPTO to determine whether a claimed process is patentable or statutory has a two-pronged approach.

A §101 process must either (1) be tied to another statutory class (such as a particular machine apparatus) or (2) transform underlying subject matter (such as an article or materials) to a different state or thing. In addition, the tie to a particular apparatus, for example, cannot be mere extra-solution activity. See *In re Bilski*, 88 USPQ2d 1385 (Fed. Cir. 2008). This test is usually referred to as the "machine or transformation test". To meet prong (1), the method step should positively recite the other statutory class (the thing or product) to which it is tied. This may be accomplished by having the claim positively recite the machine that accomplishes the method steps. Alternatively, or to meet prong (2), the method step should positively identify the material that is being changed to a different state or positively recite the subject matter that is being transformed.

Applicant respectfully submits that the claims comply with at least the first part of the machine or transformation test. For example, the multimedia service environment comprises a multimedia message service center. As disclosed for example, on page 3, lines 6-7 of the original specification, multimedia message service center is a relay server. One of ordinary skill in the art would certainly recognize that a server may be considered to be an apparatus or machine. Furthermore, Applicant respectfully submits that a message service center cannot be implemented as a mere abstract idea or as mental steps. Accordingly, Applicant respectfully submits that claims 1-5 clearly comply with the requirements of 35 U.S.C. § 101.

With respect to the prior art rejections of claims 1-5, in the previous Response filed on October 16, 2008, Applicant submitted that Applicant submitted that there is no teaching or suggestion in Kuzma of “a multimedia message service wherein a message is sent in a multimedia message service environment comprising a multimedia message service center, wherein a sent Multimedia Messaging Service message includes an electronic stamp whose validity is verified by said multimedia message service center”, as recited in claim 1.

In response, the Examiner asserts:

Kuzma teaches a multimedia message center in the form of an electronic post office verifying the payment stamp on a multimedia message (Kuzma, column 2 lines 26-52). Examiner further provided the MTM reference to further teach a . multimedia message service environment comprising a multimedia message service center (MTN, MMS Center). Thus, Examiner contends that Kuzma and MTM teach the multimedia server environment with multimedia message service center.³

Again, Applicant respectfully disagrees with the Examiner's position.

Kuzma teaches in column 2, lines 26-52, a method for transmitting electronic data and attaching electronic stamps to an electronic message. Kuzma does not pertain to the multimedia messaging environment. Kuzma specifically teaches that the electronic message is preferably an electronic mail message (column 4, lines 5-21). This clearly differs from independent claim 1 which recites “a multimedia message service wherein a message is sent in a multimedia message service environment comprising a multimedia message service center, wherein a sent Multimedia Messaging Service message includes an electronic stamp whose validity is verified by said multimedia message service center”.

³ Page 2 of the Office Action.

Although the Examiner argues that Kuzma teaches a multimedia message center, the Examiner then appears to acknowledge that Kuzma does not in fact teach the claimed multimedia message, since the Examiner states:

Examiner further provided the MTM reference to further teach a multimedia message service environment comprising a multimedia message service center.⁴

Nevertheless, Mobile News does not cure the above-noted deficiencies of Kuzma. Mobile News merely teaches a Multimedia Messaging Service intercarrier which allows users to send MMS messages across different networks. Mobile News does not add an electronic stamp to a multimedia message, as claimed.

Furthermore, a skilled artisan would have no reason to modify Kuzma electronic data transmission system. MPEP § 2141.III dictates that “[t]he key to supporting any rejection under 35 U.S.C. 103 is the clear articulation of the reason(s) why the claimed invention would have been obvious. The Supreme Court in *KSR* noted that the analysis supporting a rejection under 35 U.S.C. 103 should be made explicit. The Court quoting *In re Kahn*, 441 F.3d 977, 988, 78 USPQ2d 1329, 1336 (Fed. Cir. 2006), stated that “[R]ejections on obviousness cannot be sustained by mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness”.

The rationale provided in the Office Action for supporting the Examiner’s proposed modification of the electronic data transmission system of Kuzma is inadequate at best. There is no obvious need in Kuzma to send data between users of different networks, or to increase revenue for mobile operators, thus undermining the Examiner’s basis for the modification.

⁴ Page 2 of the Office Action.

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Accordingly, Applicant respectfully submits that independent claim 1 should be allowable because the cited references, alone or in combination, do not teach or suggest all of the elements of the claim. claims 2-5 should also be allowable at least by virtue of their dependency on independent claim 1.

In view of the above, reconsideration and allowance of this application are now believed to be in order, and such actions are hereby solicited. If any points remain in issue which the Examiner feels may be best resolved through a personal or telephone interview, the Examiner is kindly requested to contact the undersigned at the telephone number listed below.

The USPTO is directed and authorized to charge all required fees, except for the Issue Fee and the Publication Fee, to Deposit Account No. 19-4880. Please also credit any overpayments to said Deposit Account.

Respectfully submitted,

/Mark E. Wallerson/

SUGHRUE MION, PLLC
Telephone: (202) 293-7060
Facsimile: (202) 293-7860

WASHINGTON OFFICE

23373

CUSTOMER NUMBER

Mark E. Wallerson
Registration No. 59,043

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